IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11003 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMANLAL T GANDHI

Versus

BHARUCH NAGARIK SAHAKARI BANK LTD.

Appearance:

1. Special Civil Application No. 11003 of 2001

MR MUKESH A PATEL for Petitioner No. 1

MR SHIRISH JOSHI for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 21/01/2002

ORAL JUDGEMENT

Heard Mr. Patel, learned advocate for the petitioner and Mr. Shirish Joshi, learned advocate for the respondent Bank. Mr. Patel while arguing the matter

has taken me through the order under challenge passed by the Co.Operative Tribunal, Gujarat State Co.Operative Tribunal, Ahmedabad in Revision Application No. 349 of 2001 filed by the petitioner, wherein, the petitioner has challenged the order passed by the Board of Nominee dated 31st July, 2001 below Ex. 5. Mr. Patel has submitted that the Board of Nominee has rejected the application and vacated the interim stay granted earlier. The challenge made by the petitioner was in respect of Resolution passed by the respondent Bank in a meeting dated 25th June, 2001 and as per the said Resolution, considering the bylaws 29(2)(4), the petitioner was treated as seized to be the Director as he was the defaulter. Mr. Patel has also placed reliance upon certain provisions of the Co.Op. Societies Act namely Section 76-B and Rule 32. It is his submission that both the authorities have not examined the challenge made by the petitioner in respect of the Resolution passed by the Bank under Resolution No. 19 dated 25th June, 2001 and he accordingly submitted that the Bank has ignored the provisions of the statues and had removed the petitioner by relying upon their bylaws namely 29(2)(4).

2. This matter is pending for admission hearing since 28th November, 2001 and thereafter, the matter was adjourned from time to time considering the requests made by Shri Patel and interim relief granted earlier is ordered to be continued till date. An affidavit-in-reply is filed by the respondent in detailed and Mr. Joshi, learned advocate for the respondent Bank had tendered further affidavit-in-reply of Shri Dineshbhai Ambalal Pistolwala dated 6th December, 2001, which was received by Mr. Patel in the Court today. In the said affidavit, the Bank has annexed the order passed by the District Registrar dated 19th November, 2001. I am not dealt with the order passed by the District Registrar dated 19th November, 2001, which was annexed by the respondent Bank in the affidavit-in-reply dated 6.12.2001 as this court is only required to examine the order under challenge namely the order passed by the Co.operative Tribunal. As found from the petition, the petitioner has filed suit (Lavad suit) and challenged the Resolution passed by the respondent Bank in the meeting of the Managing Committee held by the Bank on 25th June, 2001 and the resolution passed in the said meeting being Resolution no. 19 and as found from the said Resolution, the Managing Committee by considering their bylaw 29(2)(4) has considered that Ramanlal Pittambardas Gandhi, the Director of the Bank as defaulter by not repaying the loan and ceased to be the Director of the Bank and in the said suit, an application

Ex. 5 was filed praying for stay of the implementation of the said Resolution and the Board of Nominee has after hearing the said application Ex. 5 has dismissed the said application and vacated the stay granted earlier and the Tribunal has while examining the Revision Application of the petitioner and on considering the contention and on considering the provisions of bylaws and the Act and relying upon the unreported decision of this court has dismissed the said Revision Application and confirmed the order passed by the lower authority i.e. the Board of Nominee.

3. Mr. Patel, learned advocate for the petitioner in his submission has placed reliance upon certain orders passed by this Court as well as the provisions of Section 76(B) of the Gujarat Co.op. Societies Act and Rule 32 of the Rules and has also in support of his submission said that both the authorities have committed error and has placed reliance upon the decision of the Hon'ble Bombay High Court in case of KERBAJI MAROTI RAO SHINDE VS. STATE OF MAHARASHTRA AND OTHERS reported in 1988 CTJ p.307 as well as the order admitting the Letter Patent Appeal dated 4th October, 2001 passed in LPA No. 1070 of 2001. I have also taken through the said judgement as well as the order passed by the Division Bench in LPA No. 1070 of 2001. On going through the order admitting the Letters Patent Appeal being LPA No. 1070 of 2001 the challenge was before the Division Bench is in respect of order passed by the learned Single Judge, dismissing the Special Civil Application of the petitioner in that case, wherein, the said petitioner has challenged the order passed by the Kutchcha District Co.Op. Bank Ltd. by relying upon their bylaws being bylaw No. 30(1)(10) read with bylaw 30(1)(5) and as per the bylaws of the said Bank, the petitioner in the said petition was disqualified as a Director of the said Bank and the Letters Patent Appeal was admitted. On examining the contentions of Mr. Patel that both the authorities had not examined the procedure, which is to be followed as per the Act and the Rules and not concentrate about the challenge made before the said authorities and accordingly, it is his submission that the petitioner cannot be ceased to be the Director of the Bank simply relying upon their bylaws and the Bank is required to take steps as highlighted in the Rules.

4. On examining the contentions, it is necessary for me to refer Rule 32(1-A) and Section 76B, which read as under :-

Rule32 (1-A):-

"A member of the committee who incurs any of the disqualification specified in sub-rule (1) shall vacate the office and if he does not vacate such office, he shall be removed by Registrar as such member provided that the Registrar shall before making such order of removal give the person concerned an opportunity of being heard."

Section 76B :- Removal of Office :-

(1) If, in the opinion of the Registrar, any officer makes persistent default or is negligent in performance of the duties imposed on him by this Act or the rules or the bye-laws or does anything which is perjudicial to the interests of the society or where he stands disqualified by or under this Act, the Registrar may, after giving the officer an opportunity of being heard, by order remove such officer and direct the society to elect or appoint a person or a qualified member in the vacancy caused by such removal and the officer so elected or appointed shall hold office so long only as the officer in whose place he is elected or appointed would have held if the vacancy had not occurred.

(2) The Registrar may, by order, direct that the officer so removed shall be disqualified to hold or to contest election for any office in the society from which he is removed and in any other society for a period not exceeding four years from the date of the order and such officer shall stand disqualified accordingly.

5. On the other hand, Mr. Joshi, learned advocate for the respondent Bank has taken me through the bye-laws and unreported decision of this court in case of CHIMANBHAI MOTIBHAI PATEL VS. STATE OF GUJARAT dated 19th September, 2001 rendered in Special Civil Application No. 2787 of 2001. Mr. Joshi has vehemently opposed that it is an admitted fact that the petitioner, who was the founder of the Bank and he continued with the Bank as a Chairman as well as Director since last 20 years and the petitioner knew that by virtue of obtaining the loan from the Bank and some of the loans were not repaid within the stipulated time and as per the bye-laws, the petitioner knew that he is declared as defaulter and in fact, the Tribunal has recorded finding by recording reasons in respect of each loan, wherein, the finding is given by the Tribunal is that the

petitioner is defaulter and further, the Tribunal has while relying upon the unreported decision, which is referred to earlier, has dismissed the revision application. He accordingly, submitted that this court will not interfere with such order while exercising my writ jurisdiction and requested for dismissal of the petition.

6. In light of the contentions raised before me by the learned advocates appearing for the parties and on going through the decision under challenge, it is not in dispute that from the inception of the establishment of the respondent Bank, the petitioner was founder of the Bank and elected as Chairman of the said Bank and subsequently, he was elected as one of the Directors of the said Bank and he continued as a Director of the Bank till the Resolution was passed. The petitioner is well aware about their bye-laws, which was approved by the authorities of the State. The bye-laws are framed for the smooth running of the Bank. It is difficult for this Court to accept the contention of Mr. Patel that the petitioner cannot be considered as defaulter in view of the fact that the period was extended, however, no document was executed. It is further found that the petitioner had obtained large amount of loan from the Bank and also granted large amount of loan in favour of his relatives. The Bank has to act as per the bye-laws, which was approved by the State Authority. As observed earlier, the petitioner is a founder of the Bank and he is continued with the bank as a Chairman as well as the Board of Director since last 20 years. The petitioner is required to enforce bye-laws of the Bank. He is not required to ignore the bye-laws. As per the findings recorded by the Tribunal, which is an admitted fact that the petitioner was defaulter by not repaying the amount. It is further found from the order that Bank has granted loan in favour of one Piyush Industries for sum of Rs. 5 lacs. The petitioner was one of the partners of the said Piyush Industries. It is also the case of the petitioner that petitioner was retired from the said partnership firm and intimation was given to the Bank that he is now no more partner of the said industry. The said borrower has not repaid the loan amount and the Bank has accordingly instituted a suit to recover the loan amount by filing suit being suit no. 763 of 1993 without joining the petitioner, as a Bank has treated the petitioner is no more partner to the said industry. It is further observed by the Tribunal that Tribunal has verified the original minute books in respect of the Resolution passed dated 28.2.1987 and the Tribunal has observed that the maintaining of such minute book, there

are some erases and even the signature of the President was also erased and Resolution was added and the petitioner has signed as a Chairman, in fact in the said meeting the petitioner was not present and the meeting was conducted by the Vice President, who chair the meeting and it is also further finding in the Resolution that the petitioner Ramanlal Gandhi was not present. It is further found that though the petitioner has intimated to the Bank that he is retired from the said partnership, the petitioner has made application to the Bank on 10th October, 1987 for renewal of the loan in the capacity as a partner of the firm. It is also brought to my notice that said partnership firm is of the son of the petitioner and loan was sanctioned for a large amount on 7th October, 1985 and the limit for repayment of the loan was expired on 7th October, 1992. As found from the order, the large amount of loan was obtained by the petitioner and granted in favour of his friends and family members and some of the loans were not ever repaid. This is the ground that the Bank has while resorting their bye-laws has passed Resolution and as found from the said Resolution that the petitioner is defaulter and as per the bye-laws Section 29(2)(4) of the Bank, the petitioner is ceased to be the Director of the Bank.

7. In my view, Bank has acted as per their bye-laws, which were approved by the said authority and further I am of the view that though the petitioner is attached with the Bank since last 20 years and he was the founder of the Bank, he is supposed to implement their bye-laws and he is never required to ignore such bye-laws. It is further found that the petitioner by filing the Lavad Suit has challenged the bye-laws before the Board of Nominee and also filed application Ex. 5 for stay of implementation of the said Resolution. It is also the contention of Mr. Patel that no such item was in the agenda to be considered in a meeting. The Board of Nominee after examining the contentions and the bye-laws and the provisions of Section 76 of the Gujarat Co.Op. Societies Act with Rule 32(1)(H) and 32(1)(A) has not favour the petitioner and rejected the application for stay and vacated the interim relief granted earlier. The petitioner has also challenged the said order by preferring Revision Application before the Tribunal. As found from the order of the Tribunal, the Tribunal has while relying upon the unreported decision of this Court, which I have referred earlier, has not accepted the contentions of the petitioner and dismissed the Revision Application. Considering the facts of the present case, even, it is not possible for this Court to accept the

decisions cited before it. In short, the petitioner being the founder of the Bank and working on the post of Chairman and Board of Director, he cannot ignore their bye-laws and therefore, it is not possible for this court to accept that the petitioner was not aware about the loan granted in favour of the parties as well as in favour of the petitioner and their friends and relatives, which were required to be repaid within stipulated time and in the present case, the Bank had to institute the suit for recovery of loan amount. To examine the contention of Mr. Patel in respect of admission of the Letters Patent Appeal being LPA No. 1070 of 2001, as observed earlier the case of the LPA No. 1070 of 2001 and the present case is different. In my view, this is not a matter, where this court has to examine his writ jurisdiction and further I am of the view that no error is committed by the Tribunal for which, this Court is required to interfere with the said order. Accordingly, there is no substance in the petition. Notice is accordingly discharged. There shall be no order as to costs.

8. At this juncture, Mr. Patel learned advocate appearing for the petitioner has requested for stay of implementation of this order for a reasonable period for which, Mr. Joshi, learned advocate for the respondent Bank has strongly opposed and prayed that in view of the fact that the petitioner is a defaulter, no protection is necessary as prayed for by Mr. Patel. On considering the submissions made before me, I am of the view that in view of the fact that interim relief is continued till today from 2nd November, 2001, the request made by Mr. Patel is reasonable and accordingly, the prayer for stay of operation of this order is granted for a period upto 5.2.2002. Direct service permitted.

(D.K.Trivedi,J.)
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